

# MEASURE PLACED ON THE CALENDAR—H.R. 980

Mr. REID. Mr. President, I understand that H.R. 980 is at the desk and due for a second reading. Is that right?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. Mr. President, it is my understanding the clerk is going to report the matter.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 980) to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

Mr. REID. Mr. President, I object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak for up to 15 minutes each.

The Senator from Utah is recognized.

## NAKED SHORT SELLING

Mr. BENNETT. Mr. President, after all the fireworks and contention on some previous issues this week, I rise to speak about something that has very little interest to most Americans but tremendous interest, I believe, to a certain portion of our economy. I want to use this opportunity to call it to the attention of the Senate.

I am talking about a practice that occurs in the stock market that has the very interesting name of naked short selling. That conjures up all kinds of interesting images in many people's minds, but this is what it is: It is a practice where somebody sells short a particular stock and never ever has to cover the sale.

Now, even that may be too much stock-market-type jargon for people to understand what I am talking about. So let me quote from an article that appeared in the Wall Street Journal a few weeks ago.

Mr. President, I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BENNETT. Quoting from the article, it says:

The naked [short selling] debate is a product of the revolution that has occurred in stock trading over the past 40 years. Up to the 1960s, trading involved hundreds of messengers crisscrossing lower Manhattan with bags of stock certificates and checks. As trading volume hit 15 million shares daily, the New York Stock Exchange had to close for part of each week to clear the paperwork backlog.

As an insert in the quotation, I remember those days. I was trading in the stock market at the time, and having the market shut down to clear the back office paperwork was not an unusual experience. Going back to the article:

That led to the creation of DTCC—

Those are initials for the Depository Trust and Clearing Corporation—

which is regulated by the SEC.

If I might, as an aside, I do not think that last statement is true. I am not sure that the SEC has control over the DTCC.

Almost all stock is now kept at the company's central depository and never leaves there. Instead, a stock buyer's brokerage account is electronically credited with a "securities entitlement." This electronic credit can, in turn, be sold to someone else.

Replacing paper with electrons has allowed stock-trading volume to rise to billions of shares daily. The cost of buying or selling stock has fallen to less than 3.5 cents a share, a tenth of paper-era costs.

But to keep trading moving at this pace, the system can provide cover for naked shorting, critics argue. If the stock in a given transaction isn't delivered in the 3-day period, the buyer, who paid his money, is routinely given electronic credit for the stock. While the SEC calls for delivery in three days, the agency has no mechanism to enforce that guideline.

This is where the practice of naked short selling comes in. I did not really understand it until I had some investment bankers—not the kind you find on Wall Street but the more modest kind you find in Salt Lake City—sit me down in front of a screen and show me what happens with stock trading. To put it in the simplest terms, someone who wants to sell short—that is, sell stock he does not own—will place a sale order.

Now, when I first sold short as a participant in the market, my broker gave me this crude little poem to remember. He said: "He who sells what isn't his'n, must buy it back or go to prison." He said: You have to understand, if you sell a stock short, the time is going to come when you are going to have to buy it back to cover that sale by delivering shares. In the days the Wall Street Journal talked about, that meant buying a crinkly piece of paper—a stock certificate—and delivering it so you have covered your short sale.

Today, that is not the case because all of the stock certificates are gone, and the crinkly pieces of paper have been replaced by electronic impulses in a computer. So this is what happens. A short seller enters the market and says: I want to short—I want to sell—1,000 shares of XYZ stock. That means

at some point he has to produce 1,000 shares to cover his sale. How do you do that? You borrow the shares, and then you buy them back at some future time.

All right. From whom do you borrow them? The DTCC. They have all the shares on deposit, and so you go to the DTCC and you say: I want to borrow 1,000 shares of XYZ stock. They say: Fine, we have them on deposit. We will lend them to you so you can use them for your short sale.

All right, everything is fine—except in this electronic age, it is possible for you to keep shuffling around the electronic impulses that represent the stock and never ever have to buy it back.

Stop and think about that. That is a pretty good business plan. You can sell as much as you want and never ever have to pay for it. If a stock is trading at \$5 a share, you could go in and sell 1,000 shares, and you get paid \$5,000 for selling 1,000 shares, and you never have to buy them. Because you are constantly moving around the electronic impulses that represent those shares, you never have to cover.

Now, when you talk to the DTCC people, they say: No, we always make sure there is a delivery. And if there is not, it is not our fault. It is not our responsibility to police this. It is up to the brokerage houses to do this.

The SEC has spent enough time looking at this and enough time talking to me that they issued to me a three-page letter outlining the steps they have taken to stop the practice of naked short selling.

Mr. President, I ask unanimous consent that their letter be included in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BENNETT. I think the SEC letter goes a long way—the SEC actions go a long way. Without getting too technical about it, they have taken a number of steps to prevent what are called "fails to deliver" and, therefore, to try to stop the naked short-selling situation.

But I have discovered something that appears to be a way around the SEC rules. Here is the transaction: Broker A shorts 1,000 shares. At the end of 13 days, which is the period he has to produce the shares, he has been unable to find any—probably hasn't even looked—but he has this requirement under the SEC rule to produce 1,000 shares. So he goes to broker B and says quietly: Sell me a thousand shares. Broker B says: I don't have any. Broker A says: It doesn't matter, sell me a thousand shares so I can cover. Broker B: All right. I will sell you a thousand shares so you can cover and there will be no passage of money; this is a deal between the two of us—a rollover. At the end of 13 days, broker B has to deliver a thousand shares, so broker A